

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANIEL WATSON,)	4:08CV3077
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
ERIC UNKNOWN, Lincoln Regional)	
Center, et al.,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Notice of Request to Dismiss Complaint ([Filing No. 11](#)), which the court construes as a motion to voluntarily dismiss pursuant to [Federal Rule of Civil Procedure 41](#). Service of process has not yet occurred, nor have Defendants filed an answer or a motion for summary judgment. Plaintiff's Motion to Dismiss is therefore granted in accordance with [Federal Rule of Civil Procedure 41\(a\)\(1\)](#) and this matter is dismissed without prejudice.

Plaintiff also requests that the court "dismiss his filing fee." ([Filing No. 11](#).) Plaintiff was previously granted leave to proceed in forma pauperis. ([Filing No. 9](#).) Because the information available to the court indicated that Plaintiff was a prisoner, he was ordered to pay the court's filing fee in accordance with the Prison Litigation Reform Act ("PLRA"). (*Id.*) However, it is now apparent that Plaintiff is a patient in the Norfolk Regional Center. ([Filing No. 10](#).)

The term "prisoner" under the PLRA "means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program." [Kolocotronis v. Morgan, 247 F.3d 726, 728 \(8th Cir. 2001\)](#) (citing

[28 U.S.C. § 1915\(h\)](#)). A person involuntarily committed as a mental patient, and not as a result of a criminal conviction, is not a “prisoner” for the purposes of the PLRA. *Id.*; see also [Jackson v. Johnson](#), 475 F.3d 261, 266 (5th Cir. 2007); [Willis v. Smith](#), No. C04-4012-MWB, 2005 WL 550528, *9 (N.D. Iowa Feb. 18, 2005).

The record does not disclose whether Plaintiff’s current commitment to the Norfolk Regional Center arises from any criminal conviction. However, the court will presume that Plaintiff is residing at the Norfolk Regional Center as a patient and not as a result of a criminal conviction. Therefore, Plaintiff’s request to be relieved from payment of the court’s filing fee in this matter is granted.

IT IS THEREFORE ORDERED that:

1. Plaintiff’s Notice of Request to Dismiss Complaint ([Filing No. 11](#)), construed as a motion to voluntarily dismiss pursuant to [Federal Rule of Civil Procedure 41](#), is granted. Plaintiff’s Complaint and this action are dismissed without prejudice;
2. Plaintiff’s request to be relieved from payment of the filing fee is granted;
3. The Clerk of the court is directed to send a copy of this Memorandum and Order to the appropriate financial officer at the Norfolk Regional Center; and
4. A separate judgment will be entered in accordance with this Memorandum and Order.

DATED this 30th day of May, 2008.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge